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Addressing Nontariff Barriers to Agricultural Trade at the WTO

Multilateral trade rules allow governments to adopt various measures—including sanitary and phytosanitary (SPS) and technical barriers to trade (TBT) measures—that are “necessary for the protection of human, animal or plant life or health” or needed to ensure product quality and prevent deceptive practices. Such measures must be based on science and may not restrict international trade more than necessary. World Trade Organization (WTO) members, including the United States, established existing rules involving SPS and TBT measures in 1995 as part of the Uruguay Round of the General Agreement on Tariffs and Trade.

Despite WTO rules and member commitments regarding SPS and TBT measures, some U.S. agricultural producers and policymakers continue to be concerned that some U.S. trading partners may be using such measures as disguised protectionism to restrict trade that may constitute nontariff barriers to trade. In advance of the WTO 12th Ministerial Conference (MC12), the United States and other WTO members have declared the need for SPS measures to address “a variety of new opportunities and emerging pressures for the international trade in food, animals and plants.” The MC12 is scheduled to start in late November 2021 and will address a range of multilateral trade issues.

Overview of SPS and TBT Measures

SPS measures are laws, regulations, standards, and procedures that governments employ to protect human, animal, and plant health from the risks associated with the spread of pests, diseases, or disease-carrying and causing organisms or from additives, toxins, or contaminants in food, beverages, or feedstuffs. Examples include product standards, requirements that products be produced in disease-free areas, quarantine and inspection procedures, sampling and testing requirements, residue limits for pesticides and drugs in foods, and limits on food additives. TBT measures address human health and safety but also include environmental protection, consumer information, or quality and cover food and nonfood traded products. TBT measures in agriculture include SPS measures but also other types of measures related to health and quality standards, testing, registration, and certification requirements, as well as packaging and labeling regulations. The **text box** lists examples of types of SPS and TBT measures.

SPS and TBT measures regarding food safety and related public health protection are regularly notified and debated within two WTO multilateral trade agreements: (1) the Agreement on Sanitary and Phytosanitary Measures and (2) the Agreement on Technical Barriers to Trade. The SPS agreement sets out the basic rules for ensuring that each country’s food safety and animal (sanitary) and plant (phytosanitary) health laws and regulations are transparent, scientifically defensible, and fair. The TBT agreement

addresses the use of technical requirements and voluntary standards for a range of food and nonfood goods. Under the agreements, countries are encouraged to observe recognized international scientific standards and avoid improper use of such measures that restrict international trade. In general, the WTO acknowledges some countries may choose to apply the *precautionary principle* when establishing food safety and animal and plant health measures and related standards. This allows countries to take protective action—including restricting trade of products or processes—if they believe the scientific evidence is inconclusive regarding the potential impacts on human, plant, and animal health, provided the action is consistent and not arbitrary.

Examples of SPS and TBT Measures

SPS Measures

- preventive requirements related to plant and animal pests and diseases and disease-carrying and causing organisms in foods, beverages, or feedstuffs
- consumer and food safety requirements, including those related to microbiological and chemical contaminants
- maximum residue limits (MRLs) for crop pesticide residues and veterinary drug residues in meat products
- requirements related to the use of food additives or other product and processing specifications
- requirements regarding agricultural biotechnology
- post-harvest treatments and quarantine requirements
- sanitation treatments (e.g., irradiation, pathogen rinses)
- restrictions on products originating from specific producing areas or the use of certain production inputs
- overlapping technical requirements (e.g., product and labeling standards, use of third-party auditors)

TBT Measures

- import quotas and administrative procedures (e.g., licenses, protocols, waivers, media advertising rules)
- export restrictions and product bans
- consumer and food safety/quality requirements (e.g., sampling, testing, risk assessment, nutritional content)
- input or process requirements (e.g., industry standards, domestic content, and rules-of-origin)
- certification schemes (e.g., sustainability/organic and animal welfare rules, and other marketing claims)
- packaging standards and labeling requirements (e.g., country-of-origin, nutrition, or health-related claims)
- technical requirements (e.g., shipping/financial documentation, standards of identity, measurement)

Source: Compiled by CRS. See CRS Report R43450, *Sanitary and Phytosanitary (SPS) and Related Non-Tariff Barriers to Agricultural Trade*.

SPS and TBT Trade Concerns

Some American food and agricultural producers contend that certain U.S. trading partners are applying SPS and TBT measures in ways that are not supported by science and that create nontariff barriers to U.S. exports. In some cases, the

United States has initiated formal trade disputes regarding SPS and TBT measures that have been elevated for review and dispute resolution within the WTO. Prominent examples include U.S. disputes against the European Union (EU) regarding the EU's approval process for products derived from agricultural biotechnology, prohibitions on the use of hormones in meat production and pathogen reduction treatments for poultry, and protection of Geographical Indications for agricultural products. Other disputes have involved U.S. complaints against various trading partners related to product testing, inspection, certification, and labeling requirements. The Office of the U.S. Trade Representative (USTR) regularly highlights these types of trade concerns in its annual *National Trade Estimate Report on Foreign Trade Barriers*. Some U.S. trading partners have initiated complaints at the WTO against U.S. trade measures, including certain U.S. import approval procedures and labeling requirements.

The SPS and TBT agreements require countries to notify the WTO of proposed new SPS and technical regulations or modifications to existing regulations whenever an international standard or recommendation does not exist or if a requirement differs from an international standard or recommendation and if the requirement may adversely affect trade of other countries. Such notification constitutes a transparency obligation requiring member governments to report trade measures that might affect other members. Since 1995, more than 19,170 SPS measures and nearly 31,380 TBT measures have been notified to the WTO from all country members, excluding emergency or amended notifications. In some cases, the WTO's SPS and TBT committees address a *specific trade concern* (STC) before it escalates into a formal dispute. Addressing STCs through the committee process may avoid disputes and provide an alternative to a more formal, and possibly lengthy, WTO dispute settlement process. New STCs raised at the WTO regarding SPS and TBT notifications have totaled more than 510 SPS STCs and 700 TBT STCs (both food and nonfood products) since 1995.

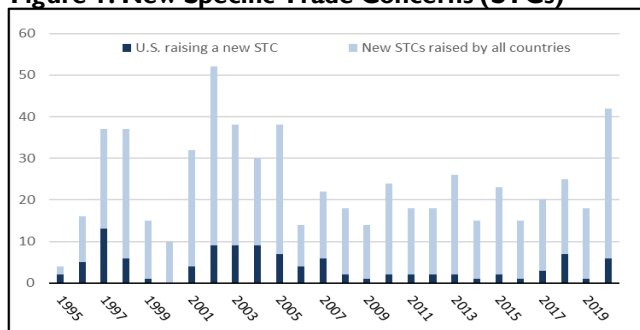
The United States—either alone or with other countries—has raised 21% (107) of all new SPS STCs raised since 1995 (**Figure 1**). More than half of new STCs raised by the United States involved international standards, often related to coherence or transparency concerns, including maximum residue limits (MRLs) for crop pesticide residues in foods and veterinary drug residues in meat products. About 10% of new SPS STCs raised by the United States involved requirements related to agricultural biotechnology. The United States has raised more than 60 new TBT STCs since 1995 (excluding specific requirements involving nonfood items but including general labeling or packaging requirements that may apply to all traded goods). New TBT STCs raised by the United States specific to agricultural products have often involved alcoholic beverages and food quality or certification schemes. In recent years, the United States has raised new STCs against the EU, Brazil, China, Colombia, India, and Southeast Asian and Middle Eastern nations.

Efforts to Update SPS and TBT

Congress continues to closely monitor efforts to address a range of nontariff barriers to U.S. agricultural exports.

In the 2010s, in the lead-up to U.S. free trade agreement (FTA) negotiations with the EU and with Asia-Pacific countries, there were multilateral efforts to “go beyond” the rules, rights, and obligations in the WTO SPS and TBT agreements, as well as to go beyond commitments in existing U.S. FTAs. These efforts were often referred to as “WTO-Plus” rules or, alternatively, as “SPS-Plus” and “TBT-Plus” rules, and they were intended to address concerns that trade negotiations might not adequately address these types of nontariff trade barriers. Related issues involved the need to address enhanced regulatory cooperation and coherence between trading partners in an FTA. Some in Congress have continued to call for effective and enforceable rules in FTA negotiations to strengthen the role of science in resolving international trade differences.

Figure 1. New Specific Trade Concerns (STCs)



Source: CRS from WTO data (<http://spsims.wto.org/>). An STC is counted as a new STC when it is raised for the first time.

Separately, the United States has negotiated bilateral and regional FTAs that seek to address SPS and TBT concerns. Although provisions in most U.S. FTAs have generally reaffirmed rights and obligations of both parties under existing WTO agreements, some have included side letters or agreements to improve cooperation on scientific and technical issues or have established a standing bilateral committee to regularly consult on such matters.

In preparation for the MC12, the United States and certain other WTO member nations have declared the need to address changes in global agriculture since the adoption of the SPS Agreement. The declaration (GEN/1758/Rev.2) calls for establishing a “work program” to explore ways to promote the adoption and use of “safe, innovative plant-protection products and veterinary medicines, and by encouraging the use of international standards, guidelines, and recommendations” developed by recognized standard-setting organizations as the basis for harmonizing SPS measures, such as MRLs for pesticides and veterinary drugs. The declaration also calls for “basing SPS measures on scientific evidence and principles including where international standards, guidelines, or recommendations do not exist or are not appropriate”; incorporating scientific uncertainty in risk analysis; supporting “greater access to and safe use of innovative tools and technologies” (such as plant breeding innovations); and addressing disease transmission and pest control. In general, WTO members have expressed an openness to engaging on the declaration.

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